

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID KHAN, ET. AL.,

Plaintiffs,

vs.

CITY OF PINOLE POLICE DEPARTMENT, ET.
AL.,

Defendants.

CASE NO. 19-cv-06316-YGR

**ORDER DENYING WITHOUT PREJUDICE
MOTION TO ISSUE SUMMONS**

Re: Dkt. No. 31

On January 2, 2020, pro se plaintiffs David Kahn, Nay Zar Tun Kyaw, and AK filed a motion captioned “Motion to issue summon.” (Dkt. No. 31.) In the filing, plaintiffs state that they have had difficulty serving certain defendants in this matter, and request that the Court order service on these defendants. (*Id.* at 2-3.)

If a plaintiff has been granted leave to proceed in forma pauperis, the Court has the authority to order the United States Marshals Service to serve the complaint. However, the Court **must** also conduct an initial review of the complaint to determine whether it states a cognizable claim. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) not only permits **but requires** a district court to dismiss an in forma pauperis complaint that fails to state a claim.” (emphasis supplied)).

Here, Magistrate Judge Thomas S. Hixson granted plaintiffs’ in forma pauperis application, but expressly reserved screening of the complaint until plaintiffs could obtain assistance from the Federal Pro Bono Project. (Dkt. No. 5 at 1-2.) Magistrate Judge Hixson also stayed the matter. (*Id.*) It was during this stay that the case was reassigned to the Court. (Dkt. No. 10.) The Court, in response to plaintiff’s filings, (Dkt. Nos. 7, 12) modified the stay until December 3, 2019. (Dkt. No. 14 at 1.)

Before the Court could screen the operative complaint, the defendants who had accepted service from plaintiffs filed several now pending motions to dismiss. (*See* Dkt. Nos. 16, 18, 19.) These motions are currently being briefed. (*See* Dkt. No. 32 (plaintiffs’ response to these motions

1 due January 21, 2020, and any reply from defendants due 7 days thereafter).)

2 Because the Court has not yet screened the operative complaint, the Court cannot, at this
3 time, grant plaintiffs' request to order service of the complaint on the remaining unserved
4 defendants. Thus, the motion is **DENIED WITHOUT PREJUDICE**. The Court intends to screen the
5 complaint at the same time it addresses defendants' motions to dismiss. Should the Court
6 determine that plaintiffs have stated a cognizable claim, the Court will extend the date on which to
7 serve the remaining defendants and order service be made on the unserved defendants through the
8 United States Marshals Service.

9 This Order terminates the motion at Docket Number 31.

10 **IT IS SO ORDERED.**

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12 Dated: January 7, 2020



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE